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September 18, 2020

VIA ELECTRONIC CASE FILING

The Honorable Katherine Polk Failla  
United States District Judge  
United States District Court  
Southern District of New York  
40 Foley Square, Room 2103  
New York, New York 11722

**MEMO ENDORSED**

Re: **Kaplan v. NYS Dep't. of Labor, et al.**  
**Case No.: 18-CV-3629 (KPF)**

Your Honor:

We write pursuant to Rule 9(C)(i) of Your Honor's Individual Rules of Practice as well as the November 7, 2019 Protective Order<sup>1</sup> [Dkt. No. 77] entered in this case seeking permission to file two (2) sealed documents that have previously been designated as "Confidential". The documents in question bear information which is essential to Plaintiff's Opposition to Defendants' pending Motion for Summary Judgment.

As Your Honor is aware, the November 7, 2019 Protective Order established the terms by which Plaintiff may introduce certain document designated as "Confidential" or "Highly Confidential" as exhibits as part of a motion or opposition thereto. Specifically, the Protective Order provides:

10. A Receiving Party shall not file Confidential Material or Highly Confidential Material in the record of the Action or with the Court, except as follows:

a. A Receiving Party may file unredacted Confidential Material or Highly Confidential Material in the record of this Litigation, or with the Court, upon written consent by counsel for the Producing Party, or as directed by the Court.

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<sup>1</sup> A true and accurate copy of the November 7, 2019 Protective Order is attached hereto as Exhibit 1.

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- b. A Receiving Party wishing to file Confidential Material or Highly Confidential Material without the written consent of the Producing Party shall comply with Rule 9 of the Individual Rules of Practice in Civil Cases of Judge Katherine Polk Failla, the Local Rules of this Court, and applicable case law. To the extent permitted by the Court, the Receiving Party may, at its election, either submit such documents with the Confidential Material or Highly Confidential Material redacted appropriately therefrom, or file such documents under seal to the extent the Court's practices and applicable rules permit. The Court retains discretion whether to afford confidential treatment to any document or information submitted to the Court in connection with any motion, application, or proceeding that may result in an order, ruling and/or decision by the Court.

Prior to making this application, Plaintiff inquired as to whether Defendants would consent to the public filing of the exhibits, in accordance with Paragraph 10(a) of the Protective Order. On September 17, 2020, Defendants advised, in writing, that they would not consent to the public filing of the two so-identified documents. Defendants further advised they do not object to Plaintiff's request to file the documents under seal. True and accurate copies of Plaintiff's written request and Defendants' written response are attached hereto as Exhibit 2. Accordingly, Plaintiff now seeks leave of the Court to file the two documents under seal in conjunction with his Opposition to Defendants' Motion for Summary Judgment.

We note Your Honor's Individual Rules of Practice require that the party seeking to file a sealed document must overcome the presumption in favor of public access to judicial documents. However, it is Plaintiff's position that these documents should not be sealed and should in fact be made public. Nevertheless, Plaintiff must file these documents under seal so as to comply with the Court's November 7, 2019 Protective Order.




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Counsel remain available should Your Honor require additional information in connection with this application.

Respectfully submitted,

**ZABELL & COLLOTTA, P.C.**

  
Saul D. Zabell

Encl.

cc: Client  
All Counsel of Record (*via* Electronic Case Filing)

Application GRANTED. Plaintiff may file the two documents under seal, viewable to the Court and parties only.

Dated: September 21, 2020  
New York, New York

SO ORDERED.



HON. KATHERINE POLK FAILLA  
UNITED STATES DISTRICT JUDGE